

Amendment No. 1 to HB0864

**Rhinehart
Signature of Sponsor**

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Date _____

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Comm. Amdt. _____

AMEND Senate Bill No. 1484*

House Bill No. 864

by deleting all language after the enacting clause and by substituting instead the following:

SECTION 1. It is the finding of the general assembly that one measure of the state's economic competitiveness is the presence of an efficient and affordable telecommunications infrastructure using the latest technological advancements. The general assembly further finds that the telecommunications industry is undergoing a dramatic change that is altering the identity of its participants, the nature of services that the industry provides, and the methods used to deliver those services. The general assembly finds that the telecommunications industry is becoming increasingly competitive, that the distinctions among the providers of the various types of telecommunications services have become blurred, and that full and fair competition within the telecommunications industry is beneficial to residents and businesses of Tennessee. Further, it is a finding of the general assembly that the Tennessee property tax laws now place certain telephone companies at a competitive disadvantage because their properties are treated as "public utility property" for ad valorem tax purposes and assessed at the ratio of fifty-five percent (55%) of such properties' fair market values while the properties of other businesses, including those of certain of their competitors, are treated as "industrial and commercial property" and assessed at lower ratios of such properties' fair market values. Accordingly, the general assembly finds that, in order to mitigate the effects of such competitive disadvantage, telephone companies whose properties are treated as "public utility property" should be entitled to an ad valorem tax equity payment to be paid out of the Telecommunications Ad Valorem Tax Reduction Fund in an amount equal to their ad valorem property tax attributable to the difference

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between the assessment ratios. The general assembly further finds, however, that it is in the best interests of the state and its political subdivisions that the revenues available to the state not be diminished by the ad valorem tax equity payments made to such telephone companies; and that an increase in the sales tax imposed on interstate telecommunications services sold to businesses is expected to provide to the state revenues to fund the payments made out of the Ad Valorem Tax Reduction Fund. The general assembly further finds that, in the event sufficient funding is not raised from the increase in sales tax, the payments made to such telephone companies should be proportionately reduced until such funding is available. Furthermore, the general assembly finds that it is in the best interests of Tennessee consumers of telecommunications services that any net tax savings experienced by such telephone companies be passed on to consumers in the form of reductions in the prices charged for the services provided by such telephone companies. Accordingly, the general assembly finds that there is a compelling need to effect these changes in the tax system of the state in order to avoid placing certain telecommunications services providers at a competitive disadvantage, to provide purchasers of telecommunications services with greater choices and lower prices, and to preserve the revenue base of the existing property tax system for the political subdivisions of the state.

SECTION 2. Tennessee Code Annotated, Section 67-6-221, is amended by deleting that section in its entirety and by substituting instead the following:

67-6-221.

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(a) Notwithstanding any other provision of the law to the contrary, interstate telecommunication services sold to businesses shall be subject to a tax imposed at the rate of seven and one-half percent (7.5%).

(b) The revenue from a rate equal to one-half percent (0.5%) of tax shall be deposited in the general fund and earmarked for education purposes for kindergarten through grade twelve (k-12) in accordance with Section 67-6-103(c)(2). The revenue from a rate equal to one-half percent (0.5%) of tax shall be distributed to incorporated municipalities in the proportion each population bears to the aggregate population of the state and to unincorporated areas of counties in the proportion each population bears to the aggregate population of the state, according to the most recent federal census and other census authorized by law. Counties and incorporated municipalities shall use such funds in the same manner and for the same purposes as funds distributed pursuant to Section 67-6-712. The revenue from a rate equal to four percent (4%) of tax shall be deposited in the Telecommunications Ad Valorem Tax Reduction Fund created by this act. All other revenue generated from the tax imposed by subsection (a) shall be deposited in the state general fund and allocated pursuant to Section 67-6-103(a).

SECTION 3.

(a) There is hereby created in the state treasury a special fund to be known as the Telecommunications Ad Valorem Tax Reduction Fund, which shall

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be administered by the comptroller of the treasury. The monies in the fund shall be used solely and exclusively to pay the expenses incurred by the comptroller of the treasury in administering the fund and implementing the provisions of Section 4 of this act, and to make the ad valorem tax equity payments authorized by Section 4 of this act. The monies in the fund shall be invested in the same manner as the monies in the state general fund. Interest earned on investment of monies in the fund shall be deposited in and credited to the fund.

(b) On or before June 30, 2003, and on or before June 30 of each year thereafter, any monies in the Telecommunications Ad Valorem Tax Reduction Fund as of May 15 of such year, which are in excess of the amount necessary to make the payments pursuant to Section 4 of this act, including payments attributable to carryovers, shall be deposited into the state general fund and allocated pursuant to Section 67-6-103(a).

SECTION 4.

(a) Pursuant to the rules of this section, every person providing telecommunications services subject to tax under Title 67, Chapter 6 shall be entitled to an ad valorem tax equity payment in an amount equal to the sum of (i) twenty-seven and twenty-seven hundredths percent (27.27%) of the aggregate ad valorem taxes paid to political subdivisions of this state relating to property assessed with a lien date on or after January 1, 2002, with respect to such person's public utility property, as defined in Section 67-5-501(8)(B), which is real property; and (ii) forty-five and forty-five hundredths percent (45.45%) of the

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aggregate ad valorem taxes paid to political subdivisions of this state relating to property assessed with a lien date on or after January 1, 2002, with respect to such person's public utility property, as defined in Section 67-5-501(8)(B), which is personal property. The payment allowed by this section shall be based on the date that the respective ad valorem taxes are paid, regardless of the date on which such taxes were originally due.

(b) On or before May 15, 2003, and on or before May 15 of each year thereafter, every telephone company entitled to a payment under this section, including payments attributable to carryovers, shall notify the comptroller of the treasury in writing of the amount of such payment and the basis for claiming such payment.

(c) On or before June 30, 2003, and on or before June 30 of each year thereafter, the comptroller of the treasury shall make all payments allowed by this section, including payments attributable to carryovers. If the comptroller of the treasury fails to make such payment within the time prescribed, the telephone company entitled to such payment may file suit against the comptroller of the treasury in chancery court in the appropriate county in this state.

(d) The amount of the payments made pursuant to this section in any year shall be limited to the amount contained in the Telecommunications Ad Valorem Tax Reduction Fund on May 15 of such year, after deduction for the reasonable administrative expenses incurred by the comptroller of the treasury. To the extent that the amount contained in the Telecommunications Ad Valorem

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Tax Reduction Fund, after deduction for the comptroller of the treasury's reasonable administrative expenses, does not equal or exceed the total amount of payments allowed by this section, including payments attributable to carryovers, such payments shall be proportionately reduced by the amount of the shortfall. Any such reductions shall be carried forward to the succeeding year or years, but in no case more than fifteen (15) years after the year in which the telephone company first became entitled to the payment. The comptroller of the treasury shall determine the amount of any reductions pursuant to this subsection.

(e) In the event that the ad valorem tax liability of a company is reduced for any year with respect to which such company has received an ad valorem tax equity payment pursuant to this section, thereby entitling such company to a refund of ad valorem taxes, such company shall repay the portion of such ad valorem tax equity payment attributable to such reduction within sixty (60) days of receiving notice of such reduction. All such repayments shall be credited to the Ad Valorem Tax Reduction Fund.

SECTION 5. To the extent that a person engaged in the business of providing telecommunications services subject to tax under Title 67, Chapter 6 experiences a net tax savings solely as a result of receiving a payment under Section 4 of this act, such net tax savings shall inure to the benefit of the business customers of such person through an adjustment in the price of telecommunications services provided by such person, including business and interconnection services. Each incumbent local exchange

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telephone company providing services pursuant to a price regulation plan in accordance with Section 65-5-209 shall adjust its aggregate revenue cap computed under such plan by the amount of the net tax savings experienced solely as a result of receiving a payment under Section 4 of this act. For purposes of this section, "net tax savings" shall take into account and be reduced by any reduction in a company's settlements due to the company complying with Title 47, Parts 36 and 69 of the Code of Federal Regulations.

SECTION 6. The provisions of this act are deemed not to be severable. Therefore, if Section 4 of this act is repealed, declared invalid or otherwise becomes inoperable, all other provisions of this act shall by operation of law immediately become inapplicable, inoperable and of no effect.

SECTION 7. The provisions of Section 2 of this act shall be effective with respect to bills submitted by telecommunications service providers to their customers which are dated on or after January 1, 2002, the public welfare requiring it. Sections 3, 4, and 5 of this act shall be effective on January 1, 2002, the public welfare requiring it. The remaining provisions of this act shall take effect and be in force and effect upon becoming a law, the public welfare requiring it.